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8 IN THE UNITED STATES DISTRICT COURT FOR THE
9 EASTERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,) CR. S-04-139 DFL
) CV. S-05-2189 DFL
12 Plaintiff/Respondent,)
) GOVERNMENT'S REQUEST
13 v.) FOR EXTENSION OF TIME
) TO RESPOND TO DEFENDANT'S
14 SERGIO ALAN FERNANDEZ,) 28 U.S.C. § 2255 MOTION
)
15 Defendant/Petitioner.)
_____)

16
17 The United States, by and through its undersigned counsel,
18 hereby requests an extension of time through and including May 15,
19 2006, to file its response to the petitioner's 28 U.S.C. § 2255
20 motion. The reasons underlying the requested extension are
21 detailed in the attached Declaration of Assistant United States
22 Attorney Kenneth J. Melikian.

23 DATED: May 3, 2006

Respectfully submitted,

24 McGREGOR W. SCOTT
United States Attorney

25
26 By: /s/ Kenneth J. Melikian
27 KENNETH J. MELIKIAN
Assistant U.S. Attorney
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DECLARATION OF KENNETH J. MELIKIAN

I, Kenneth J. Melikian, declare:

1. I am an Assistant United States Attorney for the Eastern District of California, and I am assigned to prosecute the above-entitled case.

2. The defendant has filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. On February 28, 2006, the court filed an order directing the government to file a response to the defendant's motion by April 14, 2006.

3. I received said order, and I noted on my calendar that the government's response to the defendant's § 2255 motion was due to be filed on or before April 14th.

4. Unfortunately, I was so preoccupied with my involvement in a complex jury trial that I forgot to respond to the defendant's § 2255 motion. Trial in United States v. Greer and Walker, CR.S-03-042 FCD, started on November 15, 2005. This trial lasted more than four months, with the jury returning its verdict on April 7, 2006. Due to my efforts in prosecuting that trial, I simply failed to realize that I was neglecting the instant § 2255 motion.

5. Courtroom Clerk Harry Vine kindly notified me last week that I had neglected to file the government's response to the defendant's § 2255 motion.

6. In a plea agreement filed on September 2, 2004, the defendant expressly waived his right to collaterally attack his conviction or his sentence. In fact, the defendant specifically agreed that he would not bring a motion pursuant to 28 U.S.C. § 2255 attacking his conviction or sentence.

1 7. The defendant pled guilty on September 2, 2004. I am
2 certain that the defendant acknowledged his waiver of his right to
3 collaterally attack his conviction and sentence when he pled
4 guilty.

5 8. The government believes that the defendant has legally
6 waived his right to bring the aforementioned 28 U.S.C. § 2255
7 motion, and intends, in good faith, to file a motion to dismiss
8 the defendant's § 2255 motion. Should this motion to dismiss be
9 denied, the government will request a short extension in order to
10 substantively respond to the defendant's § 2255 motion.

11 9. The government, unfortunately, has not requested that a
12 transcript of the defendant's change of plea hearing be prepared.
13 This transcript is needed to confirm the defendant's oral waiver
14 of his right to collaterally attack his conviction and sentence.

15 10. As such, the government is requesting a short
16 continuance so that the court reporter may prepare the transcript
17 of the defendant's change of plea hearing. Upon receipt and
18 review of that transcript, the government will file its motion to
19 dismiss the defendant's § 2255 motion.

20 I declare under penalty of perjury that the foregoing is true
21 and correct to the best of my knowledge and belief.

22 Executed this 25th day of April, 2006, at Sacramento,
23 California.

24 /s Kenneth J. Melikian
25 KENNETH J. MELIKIAN
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11 UNITED STATES OF AMERICA,) CR. S-04-139 DFL
) CV. S-05-2189 DFL
12 Plaintiff/Respondent,)
) [PROPOSED] ORDER
13 v.)
)
14 SERGIO ALAN FERNANDEZ,)
)
15 Defendant/Petitioner.)
16 _____)

17 For good cause as established in the government's request for
18 an extension of time;

19 IT IS HEREBY ORDERED, that the government may have until
20 May 15, 2006 to respond to the petitioner's motion in this matter.

21 DATED: May 3, 2006

22 /s/ David F. Levi
23 DAVID F. LEVI
24 U.S. District Court Judge
25
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CERTIFICATE OF SERVICE BY MAIL

UNITED STATES OF AMERICA) CR. S-04-139 DFL
) CV. S-05-2189 DFL
Plaintiff-Respondent,)
)
v.)
)
SERGIO ALAN FERNANDEZ,)
)
Defendant-Petitioner.)
_____)

The undersigned hereby certifies that she is an employee in the office of the United States Attorney for the Eastern District of California and is a person of such age and discretion as to be competent to serve papers.

That on April 25, 2006, she served a copy of the attached:

GOVERNMENT'S REQUEST FOR EXTENSION OF TIME TO RESPOND TO DEFENDANT'S 28 U.S.C. § 2255 MOTION; [PROPOSED] ORDER

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Sacramento, California; or by placing said copy into an interoffice delivery receptacle located in the Clerk's Office of the U.S. District Court in Sacramento, California.

SERVICE BY MAIL

Sergio Alan Fernandez
Reg. No. 15040-097
Federal Correction Institution
3600 Guard Rd.
Lompoc, Ca. 93436

/s/ Michele Ramirez
MICHELE R. RAMIREZ